UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/835,936	04/16/2001	Mark Vange	CIRC017	5614

25235 7590 12/14/2005	EXAMINER
HOGAN & HARTSON LLP ONE TABOR CENTER, SUITE 1500 1200 SEVENTEENTH ST DENVER, CO 80202	NEURAUTER, GEORGE C

ART UNIT	PAPER NUMBER
2143	

DATE MAILED: 12/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)
Office Action Summary	09/835,936	VANGE, MARK
	Examiner	Art Unit	
	George C. Neurauter, Jr.	2143	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>28 September 2005</u>.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-17* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-17* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____.

DETAILED ACTION

Claims 1-17 are currently presented and have been examined.

Response to Arguments

Applicant's arguments with respect to claims 1-17 have been considered but are moot in view of the new ground(s) of rejection.

It is noted that the Applicant has made no attempt to show why each and every amendment made to the claims have any sort of patentable novelty or advantage. MPEP 714.04 states:

"In the consideration of claims in an amended case where no attempt is made to point out the patentable novelty, the claims should not be allowed. See 37 CFR 1.111 and MPEP 714.02."

Therefore, the case is not in condition for allowance.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1-17 recite the limitation "wherein alternative data requests are established with the data storage mechanism responsive to determining that the data mechanism is unable to respond to the priority request". In the current reply, the Applicant pointed to page 30 of the specification for support for this limitation. However, in view of page 30, it is unclear how alternative data requests may be established with the data storage mechanism since the specification discloses that the alternative data requests are sent to mechanisms other than the data storage mechanism.

In order to avoid piecemeal examination and to give the Applicant a better appreciation for relevant prior art, the Examiner will interpret this limitation wherein the alternative data requests are established with mechanisms other than the data storage mechanism. See, e.g., *Ex parte Ionescu*, 222 USPQ 537 (Bd. App. 1984) and MPEP 2173.06.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the

art to which said subject matter pertains. Patentability shall not be
negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere
Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for
establishing a background for determining obviousness under 35
U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and
    the claims at issue.
3. Resolving the level of ordinary skill in the pertinent
    art.
4. Considering objective evidence present in the
    application indicating obviousness or nonobviousness.

Claims are rejected under 35 U.S.C. 103(a) as being
unpatentable over US Patent 6 513 061 B1 to Ebata et al.

Regarding claim 1, Ebata discloses a web server system
comprising:

a plurality of client applications coupled to a
communication network and generating web access requests;
(column 2, lines 21-59, specifically lines 25-32)

an intermediary server ("proxy cache server") coupled to
the communication network to receive the web access requests;
(column 2, lines 21-59, specifically lines 29-32)

a data storage mechanism ("server on the WAN side" or
"resource") coupled to the network and having an interface for

communicating with the intermediary server; (column 2, lines 21-59, specifically lines 29-32)

means within the intermediary server responsive to a plurality of received web access requests for establishing a channel with the data storage mechanism to obtain data from the data storage mechanism in response to a received web access request (column 2, lines 21-59, specifically lines 29-32); and

a web server within the intermediary server for formatting the obtained data into a web page that responsive to a particular web access request. (column 2, lines 21-59, specifically lines 33-41)

Ebata does not expressly disclose wherein the web access requests are for prioritizing amongst the received web access requests based on priority information within the requests to establish a priority request and alternative data requests are established with mechanisms other than the data storage mechanism responsive to determining that the data mechanism is unable to respond to the priority request, however, Colby does disclose these limitations (column 8, line 34-column 9, line 20)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of these references since Colby discloses that prioritizing web access requests enable client requests to be distributed to

other data storage mechanisms to avoid congestion and to allow

prioritized data transfers specific to the client (column 3,

lines 37-52). In view of these specific advantages and that the

references are directed to intercepting client requests at an

intermediary in order to establish data channels with data

storage mechanisms, one of ordinary skill would have been

motivated to combine these references and would have considered

them to be analogous to one another based on their related

fields of endeavor, which would lead one of ordinary skill to

reasonably expect a successful combination of the teachings.

Regarding claim 2, Ebata discloses the web server system of

claim 1 wherein at least one of the client applications

comprises a web browser application and the web access requests

comprise HTTP requests. (column 2, lines 12-14 and 33-41)

Regarding claim 3, Ebata discloses the web server system of

claim 1 wherein the intermediary server comprises a web server

having a first interface for receiving the web access requests

and a second interface operable communicate with the data

storage mechanism interface. (column 2, lines 21-59,

specifically lines 29-32)

Regarding claim 4, Ebata discloses the web server system of

claim 3 wherein the intermediary server is topologically close

to the client applications and topologically distant from data

storage mechanism. (column 1, lines 44-57; column 2, lines 33-41)

Regarding claim 5, Ebata discloses the web server system of claim 1 wherein the intermediary server comprises:

a front-end computer (Figure 1, element 2) located topologically close to the client application and configured to receive the web access requests (column 2, lines 21-59, specifically lines 29-32; column 6, lines 50-65, specifically lines 61-65)

a back-end computer (Figure 1, element 7) located topologically close to the data storage mechanism and configure to communicate with the interface of the data storage mechanism (column 2, lines 21-59, specifically lines 29-32; column 6, lines 50-65, specifically 61-65); and

a communication channel ("WAN"; Figure 1, element 10) between the front-end and back-end computers (column 6, lines 50-65, specifically line 50).

Regarding claim 6, Ebata discloses the web server system of claim 5 further comprising a web server implemented within the front-end computer. (column 1, lines 44-57; column 2, lines 21-59, specifically lines 29-32; column 6, lines 50-65, specifically 61-65)

Regarding claim 7, Ebata discloses the web server system of claim 1 wherein the data storage mechanism further comprises:

a database operative to return selected database contents in response to queries; instruction processor operative to generate queries against the database and receive data returned by the database. (column 2, lines 21-59, specifically lines 29-32)

Regarding claim 8, Ebata discloses the web server of claim 7 further comprising:

means within the intermediary server (Figure 3, element 24) for generating a remote procedure call directed to the data storage mechanism; and means within the instruction processor (Figure 2, element 13) for executing the remote procedure call to generate a query against the database in response to receiving the remote procedure. (column 8, lines 28-62, specifically lines 39-40; column 14, lines 7-12; column 16, lines 5-9)

Regarding claim 9, Ebata discloses the web server system of claim 7 further comprising means within the instruction processor (Figure 2, element 13) generating a remote procedure call directed to the intermediary server; and means within the intermediary server (Figure 3, element 24) for executing the remote procedure call to generate web page responsive to a

particular web access request. (Figure 3, element 24; column 8,

lines 28-62, specifically lines 39-40; column 14, lines 7-12;

column 16, lines 5-9)

Regarding claim 10, Ebata discloses the web server system

of claim 1 further comprising:

a resolver mechanism ("dynamic DNS server") for supplying a

network address of the intermediary server to the client

applications, wherein the resolver mechanism dynamically selects

a particular intermediary server from amongst a plurality of

intermediary servers. (column 4, lines 34-56, specifically lines

49-56)

Regarding claim 11, Ebata discloses a method for serving

web-based content comprising:

providing a communication network; ("WAN")

generating requests for web content using a plurality of

client applications coupled to the network; (column 2, lines 21-

59, specifically lines 25-32)

providing an intermediary server ("proxy cache server")

coupled to the network to receive the requests for web content

from client applications; (column 2, lines 21-59, specifically

lines 29-32)

providing a data server ("server on the WAN" or "resource")

coupled to the network and having an interface for communicating

with the intermediary server; (column 2, lines 21-59,

specifically lines 29-32)

causing the intermediary server to access the data server

in response to receiving a request from a client application;

(column 2, lines 21-59, specifically lines 29-32)

using the intermediary server; generating a web page

particular to the received request using the database content

obtained from the data server; and delivering the web page to

the client application that generated the request for database

content. (column 2, lines 21-59, specifically lines 33-41)

Ebata does not expressly disclose wherein the intermediary

server prioritizes the received web access requests based on

priority information within the requests to establish a priority

request and alternative data requests are established with

mechanisms other than the data storage mechanism responsive to

determining that the data mechanism is unable to respond to the

priority request, however, Colby does disclose these limitations

(column 8, line 34-column 9, line 20)

Claim 11 is also rejected since the motivations regarding

the obviousness of claim 1 also apply to claim 11.

Regarding claim 12, Ebata discloses the method of claim 11

wherein generating requests for web content comprises generating

an HTTP request. (column 2, lines 12-14 and 33-41)

Regarding claim 13, Ebata discloses the method of claim 11
wherein the intermediary server is topologically close to the
client applications and topologically distant from the data
storage mechanism. (column 1, lines 44-57; column 2, lines 33-
41)

Regarding claim 14, Ebata discloses the method of claim 11
wherein the step of providing an intermediary server comprises:

providing a front-end computer (Figure 1, element 2)
located topologically close to the client application and
configured to receive the requests for web content; (column 2,
lines 21-59, specifically lines 29-32; column 6, lines 50-65,
specifically lines 61-65)

providing a back-end computer (Figure 1, element 7) located
topologically close to the data storage mechanism and configure
to communicate with the interface of the data storage mechanism
(column 2, lines 21-59, specifically lines 29-32; column 6,
lines 50-65, specifically 61-65); and

maintaining a communication channel ("WAN"; Figure 1,
element 10) between the front-end and the back-end computers.
(column 6, lines 50-65, specifically line 50)

Regarding claim 15, Ebata discloses the method of claim 11
further comprising:

causing the intermediary server to issue a remote procedure

call to the data server over the established channel to initiate

the transport of data. (column 8, lines 28-62, specifically

lines 39-40; column 14, lines 7-12; column 16, lines 5-9)

Regarding claim 16, Ebata discloses the method of claim 11

further comprising: causing the data server issue a remote

procedure call to the intermediary server over the established

channel to initiate the formatting and delivery of the database

content using the data obtained from the data server. (column 8,

lines 28-62, specifically lines 39-40; column 14, lines 7-12;

column 16, lines 5-9)

Regarding claim 17, Ebata discloses the method of claim 11

further comprising:

supplying a network address of the intermediary server to

the client applications by dynamically selecting a particular

intermediary server from amongst a plurality of intermediary

servers. (column 4, lines 34-56, specifically lines 49-56)

Conclusion

The following prior art listed in the PTO-892 form included

with this Office Action discloses methods, systems, and/or

apparatuses similar to those claimed and recited in the

specification.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to George C. Neurauter, Jr. whose telephone number is (571) 272-3918. The examiner can normally be reached on Monday through Friday from 9AM to 5:30PM Eastern.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wiley can be

reached on (571) 272-3923. The fax phone number for the

organization where this application or proceeding is assigned is

571-273-8300.

Information regarding the status of an application may be

obtained from the Patent Application Information Retrieval

(PAIR) system. Status information for published applications

may be obtained from either Private PAIR or Public PAIR. Status

information for unpublished applications is available through

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see http://pair-direct.uspto.gov. Should you have questions on

access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).

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